GANGABHAVANI

v.

RAYAPATI VENKAT REDDY & ORS.

(Criminal Appeal No. 84 of 2011)

SEPTEMBER 4, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Penal Code, 1860 – ss.302/149, 148 – Explosive Substances Act, 1998 – ss. 3, 5 and 6 – Prosecution under – Of 13 accused – Trial court convicted A-1 to A-6 while acquitting rest of the accused – High Court acquitted A-1 to A-6 – On appeal, held: High Court acquitted the accused on erroneous findings – Prosecution proved its case qua accused A-1 to A-6 – Order of trial court is restored.

Appeal – Against acquittal – Interference with – Scope of – Held: There are limitations while interfering with an order against acquittal – Interference in a routine manner, where the other view is possible, should be avoided, unless there are good reasons for interference.

Evidence:

Medical evidence or evidence of ballistic expert vis-à-vis ocular evidence – If ocular evidence is totally inconsistent with medical evidence or evidence of ballistic expert, may discredit the entire case, if not explained – Where eye-witness account credible and trustworthy, medical opinion pointing to alternative possibilities cannot be accepted as conclsuive.

Medical evidence – Evidentiary value – Medical evidence, if not consistent or probable, the Court has no liability to go by that opinion.

Criminal Trial – Contradiction in evidence – Affect of – Held: Minor contradictions are bound to be ignored – But if

A *the contradiction go to the root of the case, materially affect the trial or core of the prosecution case, Court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.*

Witnesses:

B

Related/interested witness – Evidentiary value of – If evidence of such witness is cogent, credible and trustworthy, it can be relied upon – However, their evidence is required to be carefully scrutinised.

C

Natural witness vis-à-vis interested witness – Held: Natural witness should not be labelled as interested witness – Interested witnesses are those who want to derive some benefit out of the litigation.

D *FIR – Evidentiary value – Failure to mention all the names and details in the FIR – Affect of.*

The 6 respondents-accused alongwith 7 other accused were prosecuted u/ss. 148, 302/149 IPC, and ss. 3, 5 and 6 of Explosive Substances Act, 1908. The prosecution case was that the 13 accused persons came to the field where PWs 1, 2 and 3 and the deceased were working. They came armed with deadly weapons like sticks, knives, bombs and sickles and assaulted the deceased and PWs 1, 2 and 3. Trial court convicted the respondent-accused (A1to A6) and acquitted rest of the accused (A7 to A-13). Respondents-accused filed appeal, which was allowed by High Court, aquitting them. Hence the present appeals by the complainant and the State.

G **Allowing the appeals, the Court**

HELD: 1. There are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court

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can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference. [Para 6] [169-E-G]

2.1. It is a settled legal proposition that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained, may discredit the entire case of the prosecution. However, the opinion given by a medical witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. If one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ". [Para 7] [169-H; 170-A-E]

2.2. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its

A **credibility, which should not be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. [Para 7] [170-E-F]**

B *Ram Narain Singh v. State of Punjab* **AIR 1975 SC 1727: 1976 (1) SCR 27**; *State of Haryana v. Bhagirath* **AIR 1999 SC 2005: 1999 (3) SCR 529**; *Abdul Sayeed v. State of M.P.* **(2010) 10 SCC 259: 2010 (13) SCR 311**; *Rakesh v. State of M.P.* **(2011) 9 SCC 698: 2011 (15) SCR 34 – relied on.**

C **2.3. In cases where there is a contradiction between medical evidence and ocular evidence stands crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the**
D **ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. [Para**
E **8] [170-H; 171-A-B]**

3. In case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is
F **recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether**
G **their depositions inspire confidence. [Para 10] [172-D-E]**

State of U.P. v. Naresh **(2011) 4 SCC 324: 2011 (4) SCR 1176**; *Tehsildar Singh & Anr. v. State of U.P.* **AIR 1959 SC 1012: 1959 Suppl. SCR 875**; *Pudhu Raja & Anr. v.*
H *State Rep. by Inspector of Police* **JT 2012 (9) SC 252**; *Lal*

Bahadur v. State (NCT of Delhi) **(2013) 4 SCC 557: 2013 (5) SCR 744 – relied on.** A

4.1. The evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon. [Para 11] [172-F-G] B C

Bhagalool Lodh & Anr. v. State of U.P. **AIR 2011 SC 2292: 2011 (6) SCR 1037;** *Dhari & Ors. v. State of U. P.* **AIR 2013 SC 308: 2012 (8) SCR 1219;** *State of Rajasthan v. Smt. Kalki & Anr.* **AIR 1981 SC 1390;** *Chakali Maddilety & Ors. v. State of A. P.* **AIR 2010 SC 3473: 2010 (10) SCR 77 – relied on.** D

4.2. Natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/deceased. [Para 14] [174-B-D] E F

Sachchey Lal Tiwari v. State of U.P. **AIR 2004 SC 5039: 2004 (5) Suppl. SCR 107 – relied on.**

5.1. The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR. The court has to examine the explanation furnished by the prosecution for explaining the delay. If the prosecution explains the delay, the court should not reject the case of the prosecution solely on this ground. Therefore, the G H

A **entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into**
B **consideration whether it can be termed as abnormal. [Para 15] [174-D-E, F-G]**

P. Venkataswarlu v. State of A.P. **AIR 2003 SC 574: 2002 (10) SCC 46**; *State of U.P. v. Munesh* **AIR 2013 SC 147: 2012 (9) SCR 545 - relied on.**

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5.2. Merely not mentioning all the names of all the accused or their overt acts elaborately or details of injuries said to have been suffered, could not render the FIR vague or unreliable. The FIR is not an encyclopaedia
D **of all the facts. More so, it is quite natural that all the names and details may not be given in the FIR, where a large number of accused are involved. [Para 16] [174-H; 175-A-B]**

6. The defence cannot rely on nor can the court base
E **its finding on a particular fact or issue on which the witness has not made any statement in his examination-in-chief and the defence has not cross examined him on the said aspect of the matter. [Para 18] [176-C-D]**

F *Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva* (Dead) Thr. L.Rs. *& Ors.* **AIR 2013 SC 1204: 2013 (1) SCR 632**; *Rohtash Kumar v. State of Haryana,* **JT 2013 (8) SC 181**; *Gian Chand & Ors. v. State of Haryana* **JT 2013 (10) SC 515 – relied on.**

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7.1. In the present case, in view of the fact that there is sufficient evidence on record that the deceased was hacked with a hunting sickle and in such a case, A6 was convicted under Section 148 IPC, want of such an explanation is irrelevant. The cause of death as opined
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by the medical evidence was shock due to fracture of skull bone and lacerations to the brain matter and that in normal circumstances injury Nos. 1 to 3 could cause death. The doctor specifically deposed that the deceased died of a fracture of skull bones i.e. injury No. 1. PW.6 (doctor) further explained that she did not mention the type of weapon used for the reason that she was not asked about the same. However, she had clearly deposed that injury No. 2 could have been caused by a hunting sickle. This evidence of PW.6 stood fully corroborated by the version given by PWs. 1 to 3 who have clearly deposed that A6 hacked the deceased with hunting sickle on his head. [Para 29] [181-C-F]

7.2. The High Court has also taken note of the fact that the overt act assigned to A6 has not been mentioned in the FIR. The evidence on record clearly revealed that A1 to A6 came armed with deadly weapons whistling war cries and chased the deceased. The trial court convicted A6 with the aid of Section 149 IPC and not independently for the reason that the trial court was not satisfied that A6 had hacked the deceased. PW.8 who was the witness to the recoveries, deposed that seizure of hunting sickle etc. was made at the disclosure statement of the accused and he had signed the recovery memos for the same. Thus, the observations made by the High Court in this regard cannot be approved. [Para 30] [181-F-H; 182-A-B]

7.3. The High Court erroneously observed that the eye-witnesses did not speak of the explosion of bombs by certain accused and, therefore, their presence at the place of occurrence was doubted and they could also not have seen the incident because of smoke from the explosion. Such a finding was totally unwarranted, uncalled for and is perverse being based on no evidence. Not a single question had been put to the eye-witnesses in this respect and, therefore, there is nothing on record

A to show that their visibility was impaired due to the emanating of smoke and the said finding recorded by the High Court could be simply termed as illogical. The witnesses deposed that A3 to A5 also hurled the bombs which had fallen in close vicinity of the body of the B deceased though they did not hit him. It was specifically mentioned that bombs hurled by A1 and A2 had hit him, therefore, it is clear that there is no discrepancy in the testimony of the eye-witnesses with respect to the overt acts of the accused. More so, the High Court doubted the C version given by PW.1 that out of fear he hid himself behind the bushes and returned after some time and when he came back there, he did not find any person, though, in his cross-examination, he explained that about two hundred persons gathered at the place of occurrence D after the accused had left the place. [Para 31] [182-B-G]

7.4. The evidence is to be examined considering the tension prevailing at the place of occurrence. It is natural that in such a fact-situation every person would feel the apprehension of danger to his life and may run away. E There may be some discrepancy in his evidence in cross-examination but it has to be examined while taking into consideration the evidence on record as a whole. As he explained the gathering of a crowd consisting of approximately 200 persons, may have been at a later point F of time. Therefore, merely on the basis of such a statement, his presence could not be doubted and his version could not be discarded. [Para 31] [182-G-H; 183-A]

7.5. So far as the delay in lodging of FIR is G concerned, it has to be considered in light of the prevailing circumstances on that fateful day when two persons were murdered and third died of electrocution. The incident occurred in a faction ridden village having only 80 houses. The accused persons used bombs etc.

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for killing two persons. The police arrived at 10 O'clock in the morning in the village. PW.1 was taken into custody suspecting his involvement in the murder of the person who died due to electrocution. Therefore, in such a fact-situation, such adverse inference could not have been drawn and testimony of PW.1 who had submitted the FIR, since he was illiterate and, a rustic villager and did not know the niceties of law, could not be doubted. When he lodged an oral complaint, he was asked to get it written by somebody and then present it for lodging the FIR. The police officials made it clear in their cross-examination that they had asked persons present at the place of occurrence to give a complaint in regard to the incident twice, but nobody came forward to give it. In view thereof, a person who had lost two of his family members and had been suspected of being involved in the murder of a person who died due to electrocution alongwith the fact that no other person was willing to submit a complaint, the delay of 6 hours, could not be fatal, particularly in view of depositions of the eye-witnesses. Thus, the delay has been fully explained by the prosecution and there was no occasion for the High Court to take it to be fatal to the case of the prosecution. [Para 32] [183-B-G]

7.6. There could be no reason for the eye-witnesses i.e. PWs 1 to 3, who had lost two of their family members, to falsely implicate the respondents and spare the real assailants. The findings recorded by the High Court are liable to be set aside being perverse and the order of the trial court is restored. [Paras 33 and 34] [183-G-H; 184-A-B]

Case Law Reference:

1976 (1) SCR 27	relied on	Para 7
1999 (3) SCR 529	relied on	Para 7
2010 (13) SCR 311	relied on	Para 7

A	**2011 (15) SCR 34**	**relied on**	**Para 7**
	2011 (4) SCR 1176	**relied on**	**Para 9**
	1959 Suppl. SCR 875	**relied on**	**Para 9**
B	**JT 2012 (9) SC 252**	**relied on**	**Para 9**
	2013 (5) SCR 744	**relied on**	**Para 9**
	2011 (6) SCR 1037	**relied on**	**Para 11**
	2012 (8) SCR 1219	**relied on**	**Para 11**
C	**AIR 1981 SC 1390**	**relied on**	**Para 12**
	2010 (10) SCR 77	**relied on**	**Para 12**
	2004 (5) Suppl. SCR 107	**relied on**	**Para 13**
D	**2002 (10) SCC 46**	**relied on**	**Para 15**
	2012 (9) SCR 545	**relied on**	**Para 15**
	2013 (1) SCR 632	**relied on**	**Para 17**
E	**JT 2013 (8) SC 181**	**relied on**	**Para 17**
	JT 2013 (10) SC 515	**relied on**	**Para 17**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 84 of 2011.

F

From the Judgment and Order dated 13.02.2007.of the High Court of Andhra Pradesh at Hyderabad in Criminal Appeal No 41 of 2005.

WITH

G

Crl. A. NO. 86 OF 2011.

Huzefa Ahmadi, Sidharth Luthra, A. T M. Rangaramanujam, Altaf Ahmad, Altaf Fathima Rashmi Nandakumar, Rohan Sharma, P. Vinay Kumar, A. Handa,

H

Supriya Juneja, Dr. D . Mahesh Babu., Amit K. Nain, Suchitra H, Amjid Maqbool, C.S. N. Mohan Rao, Allanki Ramesh, Lokesh Kumar, Shilpa Gupta. D. Bhrathi Reddy, for the appearing Parties.

The Judgment of the court was delivered by

Dr. B.S. CHAUHAN, J.1. Both these appeals have been preferred against the impugned judgment and order of the High Court of Andhra Pradesh at Hyderabad dated 13.2.2007 passed in Criminal Appeal No. 41 of 2005, reversing the judgment and order dated 22.12.2004 passed by the Additional Sessions Judge, Kadapa at Proddatur in Sessions Case No. 374 of 2000, by which and whereunder the respondents were found guilty and convicted under Section 148 of Indian Penal Code, 1860 (hereinafter referred as 'the IPC') and awarded a sentence of 2 years each. A1 and A2 had been convicted for the offence punishable under Section 302 IPC and they were awarded life imprisonment with a fine of Rs.500/- and in default, to undergo further simple imprisonment for one month. They were also convicted under the provisions of Section 3 of the Explosive Substances Act, 1908 (hereinafter referred to as the 'Act 1908') and had been awarded the sentence of 3 years with a fine of Rs.500/- and Rs.200/- respectively and, in default, to further undergo simple imprisonment for one month and 15 days respectively. They had further been convicted under Section 5 of the Act 1908, and were awarded the punishment of three years with a fine of Rs.500/- each, in default to suffer simple imprisonment for one month. A3 to A6 had been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- each under Section 302 read with Section 149 IPC and, in default of payment of fine, to undergo a further period of simple imprisonment of one month each. However, A3 was acquitted for the offence under Section 6 of the Act 1908. A4 and A5 were further convicted under Sections 3 and 5 of the Act 1908 and awarded the punishment of 3 years on each count with a fine of Rs.500/- and, in default, to undergo a

A further period of imprisonment for one month. However, all the sentences were directed to run concurrently.

2. Facts and circumstances giving rise to these appeals are that:

B A. On 4.12.1999, Y. Eswara Reddy (PW.1), Y. Gangadhar Reddy (PW.2) and Y. Gangabhavani (PW.3) were working in their agricultural fields alongwith Y. Ramachandra Reddy (deceased) and his brother Balagangi Reddy and others.

C B. Y. Ramachandra Reddy (deceased) and his brother Balagangi Reddy supported the Congress-I party in the elections held for the State Assembly, while the accused persons supported the Telugu Desham Party (TDP). There were ill feelings between two groups as there existed chronic D factionalism between the families of the deceased and accused. In State Assembly elections, the political parties created pressure on their supporters to get maximum votes, by any means. The accused persons were waiting for the opportunity to kill Balagangi Reddy and Y. Ramachandra Reddy E (deceased).

C. On 4.12.1999, when PW.1 to PW.3 and some others were doing agricultural work in their fields alongwith Y. Ramachandra Reddy (deceased) in the morning, they heard weeping cries from the agricultural field nearby. All of them F rushed to that place and found that Rayapati Narayana Reddy had died due to electrocution. After sometime, they returned to their fields and attended to their work. At 7.30 A.M., the accused Rayapati Venkata Reddy (A1), Rayapati Ramanjul Reddy (A2), Rayapati Bheema Reddy (A3), Korrapati Rami G Reddy (A4), Korrapati Thimma Reddy (A5), Kadiyam Rami Reddy (A6), Rayapati Thirupathi Reddy (A7), Rayapati Pedda Venkata Reddy (A8), Kadiyam Rama Subba Reddy (A9), Rayapati Pedda Venkata Reddy (A10), Rayapati Chinna Bali Reddy (A11), Rayapati Venkata Reddy (A12) and H Chinnapureddy Bala Chenna Reddy (A13) came to the fields

where PW.1 to PW.3, namely, Y. Eswara Reddy (PW.1), Y. Gangadhar Reddy (PW.2) and Y. Gangabhavani Reddy (PW.3) were working armed with deadly weapons like sticks, knives, bombs and sickles whistling war cries and hurling bombs with the intent to kill Ramachandra Reddy and Balagangi Reddy. Balagangi Reddy fled his fields due to fear and was chased by A7 to A13. PW.1 hid himself under cheeky bushes near his field. Y. Ramachandra Reddy (deceased) fled on his cycle. A2 hurled a bomb which fell on the cycle of the deceased and exploded causing the deceased to fall from his cycle. A1 also hurled a bomb which hit the head of Y. Ramachandra Reddy. His head was fractured and he died due to injuries. A4 and A5 also hurled bombs towards the deceased.

D. PW.1 to PW.3 witnessed the same, however, failed to give a report immediately to the police due to fear of their lives. Y. Eswara Reddy (PW.1) preferred a complaint to the police, thus, Case Crime No. 137 of 1999 of Muddanur PS was registered. S.V. Ramana, C.I. (PW.9) began investigation, and conducted the inquest over the dead body of the deceased in presence of R. Pedda Naidu (PW.4) and M. Pratap Naidu (PW.7). He also seized blood stained tar, control tar, bomb blast thread pieces and the cycle of the deceased. Further, the Dhoti, Banian and waist thread of the deceased were also seized. Chappals of A5 which had been lying there were recovered in the presence of M. Pedda Aswartha Reddy (PW.5). The dead body of Y. Ramachandra Reddy (deceased) was sent for post-mortem which was conducted by Dr. Y. Karunasree (PW.6) wherein it was opined that he died of shock due to a fracture of the skull bones and lacerations to brain matter. The materials collected were sent for forensic analysis and it was found that the bombs contained Potassium, Chlorate Chloride, Arsenic, Sulphide and Sulphate etc.

E. After concluding the investigation, a chargesheet was filed against A1 to A13. During the trial, the prosecution examined 14 witnesses. The accused in their statement under

A Section 313 of Code of Criminal Procedure, 1973, (hereinafter referred to as the 'Cr.P.C.') denied their involvement and submitted that they had been falsely implicated because of political enmity. The defence also examined one Penugonda Sreenivasulu (DW.1), who claimed to have prepared the site B plan (Ex.X-1) but not on the basis of scale measurement.

F. On the basis of the evidence etc., the trial court found A1 to A6 guilty of the aforesaid offences and awarded them sentences as referred to hereinabove, however, A7 to A13 were acquitted.
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G. Aggrieved, A1 to A6 filed Criminal Appeal No. 41 of 2005 which has been allowed by the High Court.

Hence, these appeals by the complainant as well as by the D State of Andhra Pradesh.

3. Shri Sidharth Luthra, learned ASG appearing on behalf of the State of Andhra Pradesh and Shri Huzefa Ahmadi, learned senior counsel appearing on behalf of the appellant/ complainant, have submitted that the High Court acquitted the E said respondents without any justification. The High Court mainly found material contradictions in the evidence of PW.1 to PW.3 and doubted their presence at the place of occurrence; considered the delay in lodging the FIR fatal; found contradictions in medical evidence and ocular evidence; F doubted the witnessing of the occurrence as there could be no visibility because of the smoke created by the bombs at the time of explosion; PW.1 did not mention that A6 used a sickle in the FIR; and that only interested witnesses had been examined. It was contended that the High Court erroneously did G the same even though, the contradictions in the medical and ocular evidence were insignificant and the contradictions in the statements of PWs 1 to 3 were minor in nature. The findings of fact recorded by the High Court are perverse being based on no evidence. Thus, the appeals deserve to be allowed and H the judgment of the trial court deserves to be restored.

4. Per contra, Shri Altaf Ahmad, learned senior counsel appearing on behalf of the respondents, opposed the appeal contending that this Court should not interfere with the judgment of the High Court keeping in mind the well settled parameters for interference with the order of acquittal. The High Court has given cogent reasons for acquittal of the respondents. The incident occurred in a faction-ridden village and, admittedly, there had been a political rivalry between the parties. The delay in lodging the FIR which is at about 3.00 P.M., though the incident occurred at 7.00 A.M.– 7.30 A.M., was inordinate in view of the fact that the police had arrived at the scene of occurrence at about 9.00 A.M. The FIR was lodged after due deliberation with political leaders. Thus, no interference is called for and appeals are liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the records. Before deciding the factual controversies, we will first deal with LEGAL ISSUES:

APPEAL AGAINST ACQUITTAL:

6. This Court has persistently emphasised that there are limitations while interfering with an order against acquittal. In exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the acquittal by the lower Court bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

CONTRADICTIONS IN MEDICAL EVIDENCE AND OCULAR EVIDENCE:

7. It is a settled legal proposition that where the evidence

A of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistics expert, it amounts to a fundamental defect in the prosecution case and unless it is reasonably explained may discredit the entire case of the prosecution. However, the opinion given by a medical B witness need not be the last word on the subject. Such an opinion is required to be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all an opinion is what is formed in the mind of a person regarding a particular fact situation. If one doctor C forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Similarly, if the opinion given by one doctor is not consistent or probable, the court has no liability to go by that opinion merely because it is given by the doctor. "It would be erroneous to accord undue primacy to D the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant' ".

E Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to alternative possibilities cannot be accepted as conclusive. The eyewitnesses' account requires a careful independent assessment and evaluation for its credibility, which should not F be adversely prejudged on the basis of any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.

(Vide: *Ram Narain Singh v. State of Punjab,* AIR 1975 G SC 1727; *State of Haryana v. Bhagirath,* AIR 1999 SC 2005; *Abdul Sayeed v. State of M.P.,* (2010) 10 SCC 259; and *Rakesh v. State of M.P.,* (2011) 9 SCC 698).

8. Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence H stands crystallised to the effect that though the ocular testimony

of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

CONTRADICTIONS IN EVIDENCE:

9. In *State of U.P. v. Naresh*, (2011) 4 SCC 324, this Court after considering a large number of its earlier judgments held:

> *"In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.*
>
> *Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.*
>
> *Therefore, mere marginal variations in the*

statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited."

A similar view has been re-iterated by this Court in *Tehsildar Singh & Anr. v. State of U.P.*, AIR 1959 SC 1012; *Pudhu Raja & Anr. v. State, Rep. by Inspector of Police*, JT 2012 (9) SC 252; and *Lal Bahadur v. State (NCT of Delhi)*, (2013) 4 SCC 557).

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.

EVIDENCE OF A RELATED/INTERESTED WITNESSES:

11. It is a settled legal proposition that the evidence of closely related witnesses is required to be carefully scrutinised and appreciated before any conclusion is made to rest upon it, regarding the convict/accused in a given case. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased. In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can, and certainly should, be relied upon.

(Vide: *Bhagalool Lodh & Anr. v. State of U.P.*, AIR 2011 SC 2292; and *Dhari & Ors. v. State of U. P.*, AIR 2013 SC 308).

12. In *State of Rajasthan v. Smt. Kalki & Anr.* AIR 1981 SC 1390, this Court held:

> *"5A. As mentioned above the High Court has declined to rely on the evidence of P.W. 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased".....For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True it is she is the wife of the deceased; but she cannot be called an 'interested' witness. She is related to the deceased.* ***'Related' is not equivalent to 'interested. A witness may be called 'interested' only when he or she derives some benefit from the result of a litigation;*** *in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be 'interested'. In the instant case P.W.1 had no interest in protecting the real culprit, and falsely implicating the respondents."*
>
> (Emphasis added)

(See also: *Chakali Maddilety & Ors. v. State of A. P.*, AIR 2010 SC 3473).

13. In *Sachchey Lal Tiwari v. State of U.P.*, AIR 2004 SC 5039, while dealing with the case this Court held:

> *"7. .....Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witness' is borrowed from countries where every*

A *man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their*
B *presence."*

14. In view of the above, it can safely be held that natural witnesses may not be labelled as interested witnesses. Interested witnesses are those who want to derive some benefit out of the litigation/case. In case the circumstances reveal that
C a witness was present on the scene of the occurrence and had witnessed the crime, his deposition cannot be discarded merely on the ground of being closely related to the victim/ deceased.

D **DELAY IN LODGING FIR AND ITS CONTENTS:**

15. The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR. The court has to examine the explanation furnished by the prosecution for
E explaining the delay. There may be various circumstances particularly the number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of the incident that has taken place. If the prosecution explains the delay, the court should not reject the case of the prosecution solely on this
F ground. Therefore, the entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into
G consideration whether it can be termed as abnormal.

(Vide: *P. Venkataswarlu v. State of A.P.,* AIR 2003 SC 574; and *State of U.P. v. Munesh,* AIR 2013 SC 147).

H 16. It is also a settled legal proposition that merely not

mentioning all the names of all the accused or their overt acts elaborately or details of injuries said to have been suffered, could not render the FIR vague or unreliable. The FIR is not an encyclopaedia of all the facts. More so, it is quite natural that all the names and details may not be given in the FIR, where a large number of accused are involved.

NON-CROSS EXAMINATION OF A WITNESS ON A PARTICULAR ISSUE:

17. This Court in *Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors.*, AIR 2013 SC 1204 examined the effect of non-cross examination of witness on a particular fact/circumstance and held as under:

> *"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness,* ***the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility****. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit.*

A *Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."*

B

(Emphasis supplied)

(See also: *Rohtash Kumar v. State of Haryana,* JT 2013 (8) SC 181; and *Gian Chand & Ors. v. State of Haryana,* JT 2013 (10) SC 515).

C

18. Thus, it becomes crystal clear that the defence cannot rely on nor can the court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in-chief and the defence has not cross examined
D him on the said aspect of the matter.

19. The case is thus, required to be examined with reference to the aforesaid legal propositions.

Y. Eswara Reddy (PW.1) submitted the complaint stating
E that they were working in their respective fields in the morning, and had gone to the neighbouring field after hearing the hue and cry and found that one Rayapati Narayana Reddy had died due to electrocution. When they returned and began to work in their field, the accused persons came there armed with sticks,
F knives, bombs and sickles and some of them were whistling war cries. Y. Ramachandra Reddy (deceased) and his brother Balagangi Reddy also came there. The accused trespassed in their field and chased the deceased who escaped on his cycle. A2 hurled a bomb at Y. Ramachandra Reddy (deceased)
G which hit him on the legs and he fell down from the cycle. A1 hurled a bomb which fell on the head of Y. Ramachandra Reddy (deceased) and A3, A4 and A5 also hurled bombs which fell in close proximity of Y. Ramachandra Reddy (deceased). A6 hacked Y. Ramachandra Reddy (deceased) with a hunting
H sickle on his head. The witness apprehended danger to his life

and ran away and hid in the bushes. When he returned **he did not find any person at the scene of occurrence.** He came to the village at 10.30 A.M. The police took him into custody and took him to the agricultural field where Rayapati Narayana Reddy had died as the police suspected him to be involved in his murder. He wanted to lodge a complaint regarding the death of his brother, however, as the police was involved in settling down the tension in the village, he was told that **it would be registered after some time.** He deposed that he was totally illiterate and was asked by the police to get the complaint written by somebody. He submitted it later at about 1.00 P.M., though, it was shown at 3.00 P.M. He had also disclosed that the two groups belonged to different political parties and there was rivalry between them.

20. The deposition of Y. Gangadhar Reddy (PW.2), the nephew of Y. Ramachandra Reddy (deceased), corroborated the evidence of Y. Eswara Reddy (PW.1) regarding the death of Rayapati Narayana Reddy who had died due to electrocution. They came back to their field and started working. The accused persons came fully armed with sticks, knives, bombs and sickles and some of them were whistling war cries. Y. Balagangi Reddy ran towards Railway Gate. Narayanamma and Y. Gangabhavani (PW.3) followed him. Accused A7 to A13 chased Balagangi Reddy. Apprehending danger to his life, Y. Ramachandra Reddy escaped on his cycle. A1 to A6 chased him. A2 threw a bomb which hit Y. Ramachandra Reddy (deceased) on his legs. He fell down from the cycle. A1 hurled another bomb which hit him on his head and he suffered a fracture. A3 to A5 also hurled bombs but the same fell in his close proximity. A6 was holding a sickle with which he hacked the head of deceased.

21. Y. Gangabhavani (PW.3) widow of Y. Ramachandra Reddy (deceased), duly corroborated the evidence of Y. Eswara Reddy (PW.1) and Y. Gangadhar Reddy (PW.2) by narrating the incident in the same manner. She also deposed

A about how her husband fell down from the cycle after being hit by the bomb which was hurled by A2. Bomb hurled by A1 hit him on his head, which caused fracture on the head of deceased. A3 to A5 hurled bombs which exploded by the side of her husband. A6 hacked on the left side of the head of her
B husband with a hunting sickle. She herself could not muster courage to come forward to save her husband rather, she hid behind the bushes and came out only after the police arrived. She identified the clothes of her husband and other articles that belonged to him.

C

22. Dr. Y. Karunasree (PW.6) conducted the post-mortem examination, who deposed that she found on the body of Y. Ramachandra Reddy, the following injuries:

External Injuries:

D

"(1) Crushed lacerated extensive injury involving bones muscles, vessels, like soft tissues (including brain matter) parts of skull and right side of the face. Hairy part of the scalp including upper part of the cranium, both eye balls,
E nose, upper jaw, brain matter blown off. Blackening of the injured parts and surrounding tissues present. Clotting present over wound edges.

(2) Incised injury 3x2 cms into bone deep size present over left cheek extended and ended into injury No.1.

F

(3) Crushed lacerated injury involving left eye ball, nose, major part of the upper lip and sparing the lower lip.

(4) Multiple various sized splinter injuries present over right side of the chest and upper abdominal region with
G blackening surrounding tissues. Clotting present over the wound.

(5) Multiple various sized small contusions present over right side back, left axillary's region, left waist region, left
H fore arm and upper arm and front of the left knee joint.

(6) Multiple various sized spinster injuries with blackening of surrounding tissues present over front of the right upper limb, front and back of the right thigh and back of left thigh."

She opined that deceased appeared to have died of shock due to fracture of skull bones and lacerations of brain matter. In her opinion, death occurred 12 to 14 hours prior to her examination. In her cross-examination she deposed that:

"....Injury No.2 in EX.P-4 is possible by sharp edged weapon (Addl. P.P. shown too hunting sickles to the witness). The injury No.2 is possible with hunting sickles shown to me Blackening mentioned in the Injury No.4 due to explosion bomb. Injury NO.5 may be possible by falling on the ground. Injury NO.6 is also possible with explosion of bomb....."

23. M. Pratap Naidu (PW.7) was a panch witness in the inquest of the dead body of Y. Ramachandra Reddy (deceased). D. Khader Basha, V.A.O., (PW.8) was taken by the police to the place of the occurrence. There he found some bombs in a bucket and he signed some documents regarding the recovery of the same. A1, A2 and A7 were taken in the police custody in his presence. Some hunting sickles and other articles were also recovered from the accused.

24. S.V. Ramana, C.I. (PW.9) is the police officer who received the complaint. He deposed that he was posted at the concerned police station as an S.I. He received vague information regarding the deaths at Kodigandlapalli village. In view thereof, he left the police station immediately at 9.40 A.M. and reached the place of occurrence. Prior to his arrival, Inspector of Police, Mondapuram had already reached to the scene of the offence. On the same day, he received a written complaint at 3.00 P.M., on the basis of which, an FIR was registered. In his cross-examination, he explained that when he reached the place of occurrence, he asked the persons present there to submit a complaint in writing but out of

A **fear, nobody did the same.** He further deposed that the distance between the village and police station was 16 Kms. He reiterated on being asked again in the cross-examination **that he tried his level best to get a complaint from a person not concerned with the faction, but no one came** B **forward.**

25. S.M. Basha, H.C. (PW.10) is the investigating officer, incharge of the police station and he deposed that the case was registered against the accused persons and he further pointed out that three murders had taken place and most of the C police personnel had gone there and only one or two persons were left in the police station. He also deposed that after getting the complaint, it was forwarded to the Magistrate's Court which was received therein on 5.12.1999 at 1.20 A.M.

D 26. So far as P. Sreenivasulu (DW.1) was concerned, though he was examined by the defence, he did not depose with respect to anything worth mentioning either in support of prosecution or of the defence.

E 27. In view of the aforesaid evidence, the trial court came to the conclusion that there was some delay in lodging the FIR and came to the conclusion that it was duly established from the evidence of PWs.1 to 3 that A1 to A6 committed the offence against Y. Ramachandra Reddy (deceased) and their narration about the manner in which the offence was committed, could F not be doubted as the witnesses have identified the accused persons and material objects particularly M.O.1 to M.O.6. The FSL report (Ex.P-8) also dealt with pieces of thread, blood stained tar road sample and control tar road sample contained in M.Os.1, 2, 4 and 7. The aforesaid articles were the result of G the explosion of a mixture containing Potassium, Chlorate Chloride, Arsenic, Sulphide and Sulphate etc. The court also dealt with other material objects contained in M.Os.9 and 11 and held that the accused had bombs that exploded and killed Y. Ramachandra Reddy (deceased) and, therefore, they were H convicted.

28. The High Court reappreciated the evidence and found fault with the judgment of the trial Court and held that there were contradictions in medical evidence and ocular evidence. As per the evidence of Dr. Y. Karunasree (PW.6) who conducted the post-mortem examination, there were incised injuries 3x2 Cms., bone deep over the left cheek which was possible only by a sharp edged weapon. However, she did not mention in her cross-examination which weapon could have caused such an injury.

29. In view of the fact that there is sufficient evidence on record that Y. Ramachandra Reddy (deceased) was hacked with a hunting sickle and in such a case, A6 was convicted under Section 148 IPC, the want of such an explanation is irrelevant. The cause of death as opined by the medical evidence was shock due to fracture of skull bone and lacerations to the brain matter and that in normal circumstances injury Nos. 1 to 3 could cause death. The doctor specifically deposed that Y. Ramachandra Reddy (deceased) died of a fracture of skull bones i.e. injury no. 1. Dr. Y. Karunasree (PW.6) further explained that she did not mention the type of weapon used for the reason that she was not asked about the same. However, she had clearly deposed that injury no. 2 could have been caused by a hunting sickle. This evidence of Dr. Y. Karunasree (PW.6) stood fully corroborated by the version given by PWs. 1 to 3 who have clearly deposed that A6 hacked the deceased with hunting sickle on his head.

30. In view thereof, we cannot concur with the finding recorded by the High Court on this aspect. The High Court has also taken note of the fact that the overt act assigned to A6 has not been mentioned in the FIR. The evidence on record clearly revealed that A1 to A6 came armed with deadly weapons whistling war cries and chased Y. Ramachandra Reddy (deceased). The trial court convicted A6 with the aid of Section 149 IPC and not independently for the reason that the trial court was not satisfied that A6 had hacked the deceased. D. Khader

A Basha, V.A.O., (PW.8), who was the witness to the recoveries, deposed that seizure of hunting sickle etc. was made at the disclosure statement of the accused and he had signed the recovery memos for the same. Thus, the observations made by the High Court in this regard cannot be approved.

B

31. The High Court erroneously observed that the eye-witnesses did not speak of the explosion of bombs by certain accused and, therefore, their presence at the place of occurrence was doubted and they could also not have seen the incident because of smoke from the explosion. Such a finding C was totally unwarranted, uncalled for and is perverse being based on no evidence. Not a single question had been put to the eye-witnesses in this respect and, therefore, there is nothing on record to show that their visibility was impaired due to the emanating of smoke and the said finding recorded by the High D Court could be simply termed as illogical. The witnesses deposed that A3 to A5 also hurled the bombs which had fallen in close vicinity of the body of Y. Ramachandra Reddy (deceased) though they did not hit him. It was specifically mentioned that bombs hurled by A1 and A2 had hit him, E therefore, it is clear that there is no discrepancy in the testimony of the eye-witnesses with respect to the overt acts of the accused. More so, the High Court doubted the version given by Y. Eswara Reddy (PW.1) that out of fear he hid himself behind the bushes and returned after some time and when he F came back there, he did not find any person, though, in his cross-examination, he explained that **about two hundred persons gathered at the place of occurrence after the accused had left the place.** The evidence is to be examined considering the tension prevailing at the place of occurrence. G It is natural that in such a fact-situation every person would feel the apprehension of danger to his life and may run away. There may be some discrepancy in his evidence in cross-examination but it has to be examined while taking into consideration the evidence on record as a whole. As he explained the gathering H of a crowd consisting of approximately 200 persons, may have

been at a later point of time. Therefore, merely on the basis of such a statement his presence could not be doubted and his version could not be discarded. A

32. So far as the delay in lodging of FIR is concerned, it has to be considered in light of the prevailing circumstances on that fateful day when two persons were murdered and third died of electrocution. The incident occurred in a faction ridden village having only 80 houses. The accused persons used bombs etc. for killing two persons. The police arrived at 10 O'clock in the morning in the village. Y. Eswara Reddy (PW.1) was taken into custody suspecting his involvement in the murder of Rayapati Narayana Reddy who died due to electrocution. Therefore, in such a fact-situation, such adverse inference could not have been drawn and testimony of Y. Eswara Reddy (PW.1), who had submitted the FIR, since he was illiterate and, a rustic villager and did not know the niceties of law, could not be doubted. When he lodged an oral complaint, he was asked to get it written by somebody and then present it for lodging the FIR. The police officials made it clear in their cross-examination that they had **asked persons present at the place of occurrence to give a complaint in regard to the incident twice, but nobody came forward to give it.** In view thereof, we do not think that a person who had lost two of his family members and had been suspected of being involved in the murder of Rayapati Narayana Reddy who died due to electrocution alongwith the fact that no other person was willing to submit a complaint, the delay of 6 hours, could be fatal, particularly in view of depositions of the eye-witnesses. Thus, the delay has been fully explained by the prosecution and there was no occasion for the High Court to take it to be fatal to the case of the prosecution. B C D E F G

33. There could be no reason for the eye-witnesses i.e. PWs 1 to 3, who had lost two of their family members, to falsely implicate the respondents and spare the real assailants.

34. In view of the above, the findings recorded by the High H

A Court are liable to be set aside being perverse. The appeals succeed and are allowed. The judgment and order of the High Court dated 13.2.2007 passed in Crl.Appeal No. 41 of 2005 is set aside, and judgment and order of the trial court dated 22.12.2004 passed in Sessions Case No. 374/2000 is
B restored. The respondents are directed to surrender within a period of 4 weeks from today to serve out the remaining sentence, failing which the learned Additional Sessions Judge, Kadapa, is requested to take them into custody and send them to jail to serve their left over sentences. A copy of this judgment
C be sent to the said court for information and compliance.

Kalpana K. Tripathy Appeals allowed.